IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.710 OF 2004

Shri Balasaheb Sopana Shewale — Appellant
vs.
Smt.Savitrabai Sopana Shewale & ors. — Respondents

Mr.Shiva Patil for the appellant.

Mr.Jaydeep Deo for respondents 1 to 4.

CORAM : B.H. MARLAPALLE,J.

DATED : 6th September 2005

P.C.

Heard Mr.Patil, the learned counsel for the appellant.

2. This appeal arises from the order passed by the learned 8th Adhoc Additional District Judge at Pune in Misc. Application No.99/2002 on 22.6.2004 rejecting the prayer for restoration of Appeal No.846/99 which was dismissed in default.

3. The restoration application was filed belatedly and delay was condoned. The appeal was dismissed in default on or about 4.12.2001 and the restoration application was filed on 15.1.2002. It has been noted by the lower Appellate Court that though the appellant had filed an Appeal No.847/99, the prayer made in the application had

stated for restoration of Appeal No.846/99. This Appeal No.846/99 was admittedly filed by the present respondent nos. 1 to 4 and it was decided by the learned 5th Adhoc Additional District Judge at Pune on 30.1.2002.

4. During all this period even the execution proceedings in respect of the decree which was challenged in Appeal No.847/99 have been concluded and the said decree has been duly executed. The learned counsel for the respondents has placed on record a copy of the 7/12 extract issued on 12.8.2004 which indicates that the partition decree has already been acted upon. Under the circumstances, there is no reason to hold that the order passed by the lower Appellate Court is illegal or perverse.

5. The appeal is, therefore, dismissed in limine.

6. Civil Application does not survive.

(B.H. MARLAPALLE,J.)